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Briscoe, Kurt G. Norris McLaughlin & Marcus, PA 875 Third Avenue, 8th Floor New York, NY 10022			SELLS, JAMES D	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/830,172  
Filing Date: April 21, 2004  
Appellant(s): SCHLIEPHACKE ET AL.

Kurt G. Briscoe (33,141)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 05/24/2010 appealing from the Office action mailed 06/22/2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,370,420	Khatib et al	12-1994
6,413,345	Treleaven	7-2002

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5,482,779	Bausewein et al	1-1996
2002/0041945	Scholz et al	4-2002

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khatib (US Patent 5,370,420) in view of Treleaven (US Patent 6,413,345).

Regarding claim 1, Khatib discloses a method of making pressure sensitive labels. As shown in the figure, the method involves providing a face sheet 24 on web 12. Face sheet 24 is provided with a pressure sensitive adhesive on its underside (see col. 2, lines 31-33). Face sheet 24 is die cut vertically and horizontally along lines 28, 30, 32 and 34 to form individual labels 26 (see col. 2, lines 38-45). These cross die cuts extend over the entire width of face sheet 24 in the manner claimed by the applicant. In addition, the specification only describes die cutting face sheet 24, not web 12 and the figure only shows the die cuts in face sheet 24, not in web 12. Therefore during the cross diecutting, the backing material (web 12) is not cut into or is only cut into insignificantly in the manner claimed by the applicant. Web 12 comprises a release

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coated liner that is coated on the upper surface with a conventional release coating (see col. 2, lines 25-28).

However, Khatib does not disclose the die cut line configuration as claimed by the applicant. Regarding this difference, the applicant is directed to the reference of Treleaven.

Treleaven discloses a method for making labels. This method employs die cut station 30 to form tear lines 135A, 135B, 155A, 155B and 158 in the labels. In particular, Figs. 2 shows the tear lines with a saw-toothed configuration.

It would have been obvious to one having ordinary skill in the art to employ a saw-toothed tear line, as taught by Treleaven, in the method of Khatib as a matter of choice based on desired physical properties (i.e. ease and effectiveness of use by the consumer) and functionality of the labels being produced. In addition, since both Khatib and Treleaven teach cut lines, it would have been obvious to one having ordinary skill in the art to substitute one type of cut line for another in order to achieve predictable results.

Regarding claim 2, the figure of Khatib shows diecuts 28, 30, 32 and 34 surrounding labels 26. The top and bottom portions of these diecuts are cut at an angle of substantially 90° in relation to the direction of the web in the manner claimed by the applicant.

Regarding claim 3, Figs. 2-3 and 8 of Treleaven shows die cut tear lines with a sawtooth-like or zigzag-formed pattern. Motivation has been provided above (see the

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rejection of claim 1) to employ these die-cut tear lines of Treleaven in the method of Khatib.

Regarding claim 4, Khatib discloses the web of labels (face sheet 24) includes a pressure sensitive adhesive layer its underside (see col. 2, lines 31-33).

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Khatib in view of Treleaven as described above in paragraph 2 in further view of Bausewein et al (US Patent 5,482,779).

Regarding claim 5, Khatib does not disclose the anti-adhesive coating on both sides of the backing materials as claimed by the applicant. Regarding this difference, the applicant is directed to the reference of Bausewein

Bausewein discloses a process for manufacturing a label. As shown in Fig. 1, the label product 12 comprises printable recording medium or film 1, adhesive layer 2, intermediate layer 4, adhesive layer 4 and carrier sheet or foil 5. At col. 5, lines 30-36, Bausewein discloses that carrier foil 5 can preferably be coated on both sides with silicone in order to produce a primary laminated material which can serve as the base material for receiving a variety of printable materials thereon.

It would have been obvious to one having ordinary skill in the art to employ carrier or backing material with an anti-adhesive material coating on both sides thereof, as taught by Bausewein, in the method of Khatib in order to provide the predictable result of providing a carrier material which can serve as the base material for receiving a variety of printable materials thereon. In addition, since Bausewein discloses the same

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silicone material on both sides of the backing or carrier material, it is the examiner's position that these silicone coatings inherently do not differ substantially in the degree to which they repel the same layer of adhesive in the manner claimed by the applicant.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Khatib in view of Treleaven as described above in paragraph 2 in further view of Scholz et al (US 2002/0041945).

Regarding claim 6, Khatib does not disclose dispensing the diecuts at a rate of 0.3-2.0 m/s as claimed by the applicant. Regarding this difference, the applicant is directed to the reference of Scholz.

Scholz discloses feeding diecut materials at web speeds of about 0.75 m/s up to about 1.5 m/s. See paragraph [0056].

It would have been obvious to one having ordinary skill in the art to employ web speeds of about 0.75 m/s up to about 1.5 m/s, as taught by Scholz, in the method of Khatib, in order to provide the predictable result of producing articles at a fast rate of speed.

#### **(10) Response to Argument**

Applicant argues there is no motivation to substitute of a saw-toothed tear line for a straight line. The examiner does not agree. As stated above, it would have been obvious to one having ordinary skill in the art to employ a saw-toothed tear line, as taught by Treleaven, in the method of Khatib as a matter of choice based on desired physical properties (i.e. ease and effectiveness of use by the consumer) and

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functionality of the labels being produced. In addition, since both Khatib and Treleaven teach cut lines, it would have been obvious to one having ordinary skill in the art to substitute one type of cut line for another in order to achieve predictable results.

Applicant argues the dispensing speed (greater than 0.3 to a maximum of 2.0 m/s) constitutes unexpected results. This evidence is recited in applicant's example on pages 23-25 of specification. Applicant further asserts that since such dispensing speeds are now recited in applicant's claims (claim 6), applicant's claims are now patentable over the prior art. The examiner does not agree. Feeding/dispensing diecut materials at a rate in the range recited in applicant's claims is known in the prior art (see Scholz et al – paragraph [0056] as described above). In addition, the evidence of applicant's example is not commensurate in scope with the claimed subject matter. Applicant's example describes undular cross-diecutting with a maximum application rate of 2.0 m/s. However, applicant's claim 1 recites that the diecutting is a non-branching line having a form other than that of a straight line. Applicant's claim 3 recites that the diecutting line is arcuate, undular, sawtooth-like and/or zigzag-formed.

Applicant argues employing an undular cross-diecutting enables a maximum application rate of 2.0 m/s while the maximum application rate for a straight cross-diecutting is only 0.3 m/s. However, it is noted that such limitations are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).



Applicant argues Scholz does not disclose dispensing the diecuts from a dispensing device at the improved speed of applicant's invention. The examiner does not agree. Khatib discloses dispensing the diecuts in the manner claimed by the applicant. Scholz discloses it is known to diecut and matrix strip the materials at high speeds (0.75 to 1.5 m/s). Since Scholz discloses it is known to process the web materials at high speed, it would have been obvious to one having ordinary skill in the art to employ web speeds of about 0.75 m/s up to about 1.5 m/s, as taught by Scholz, in the method of Khatib, in order to provide the predictable result of producing articles at a fast rate of speed.

Applicant requests a response to the *Merchant* decision. First, all of the method steps applicant alleges produce unexpected results are known to the prior art (see Khatib in view of Treleaven and in further view of Bausewein et al as described above). Second, the specific results applicant alleges are unexpected are also known to the prior art (see Scholz as described above). Therefore the examiner does not believe the fact pattern of *Merchant* applies to the fact pattern of the present application.

Applicant argues Bausewein does not overcome the basic failure of Khatib and Treleaven to teach or suggest diecutting along a diecut line having a form other than a straight line, as required by claim 1. However, the examiner has applied the reference of Bausewein to show the concept of employing a carrier or backing material with an anti-adhesive material coating on both sides thereof as recited in applicant's claim 5. The examiner is not relying on the disclosure of Bausewein to show diecutting along a diecut line having a form other than a straight line.

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Applicant argues Scholz does not overcome the basic failure of Khatib and Treleven to teach or suggest diecutting along a diecut line having a form other than a straight line, as required by claim 1. However, the examiner has applied the reference of Scholz to show the concept of diecutting and matrix stripping (i.e. feeding or dispensing) materials at high speeds (0.75 to 1.5 m/s) as recited in claim 6. The examiner is not relying on the disclosure of Scholz to show diecutting along a diecut line having a form other than a straight line.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/James Sells/  
Primary Examiner, Art Unit 1791

Conferees:

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